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CHARLES E. NIEMAN  
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IN THE

# Supreme Court of the United States

October Term, 1942

No. 203

**MONTANA-DAKOTA UTILITIES CO.,**  
Petitioner,

vs.

**FEDERAL POWER COMMISSION, MONDAKOTA GAS  
COMPANY, SOUTH DAKOTA PUBLIC UTILITIES  
COMMISSION and NORTH DAKOTA PUBLIC SERV-  
ICE COMMISSION,** Respondents.

**ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR  
THE EIGHTH CIRCUIT**

**BRIEF FOR MONDAKOTA GAS COMPANY  
IN OPPOSITION**

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✓ **CHARLES E. NIEMAN,**

Attorneys for Respondent,

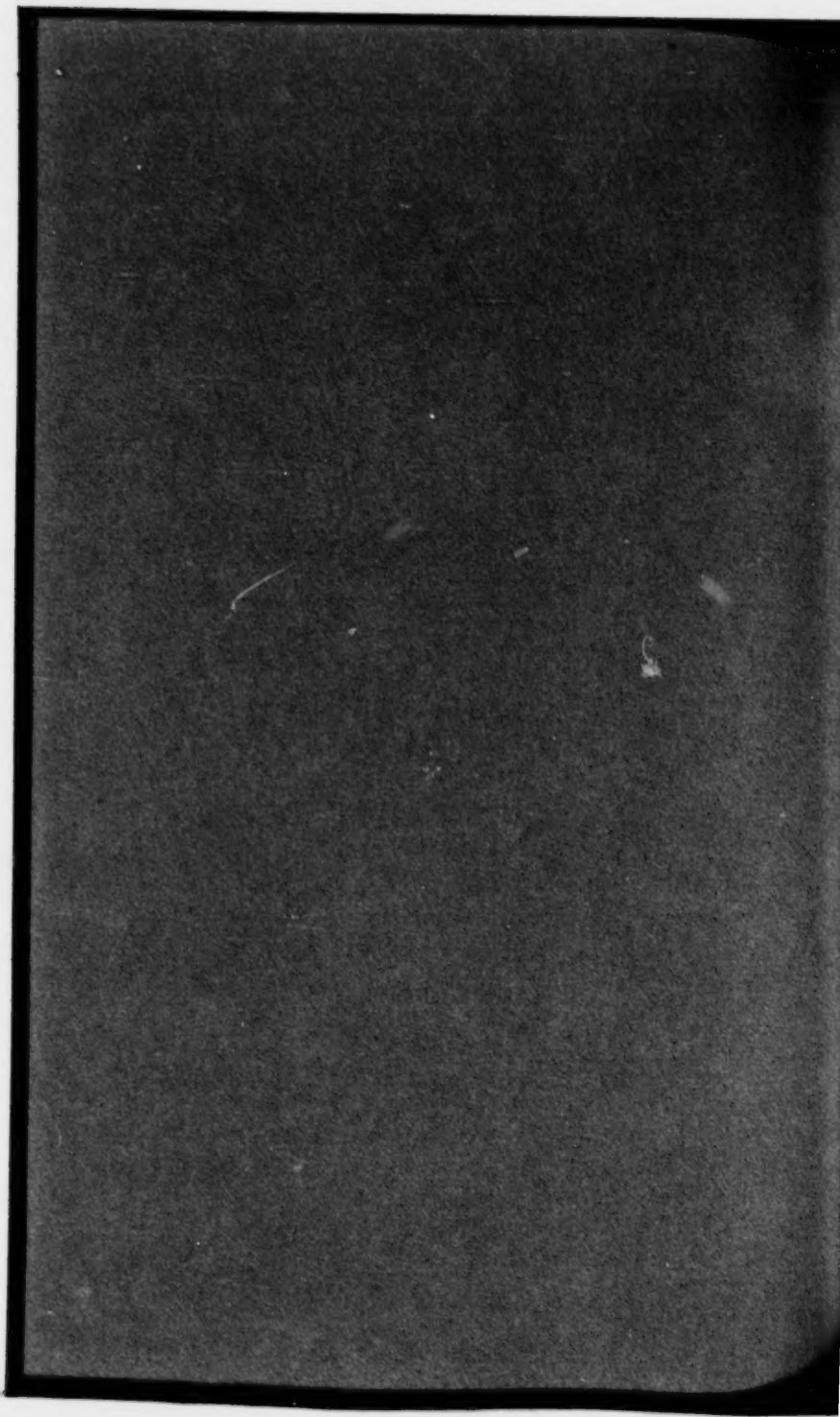
**Monakota Gas Company,**

**1430 Northwestern Bank Bldg.,**

**Minneapolis 2, Minnesota.**

**MELRIN & NIEMAN,**

Of Counsel.



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**IN THE**  
**Supreme Court of the United States**

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October Term, 1948

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No. 262

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MONTANA-DAKOTA UTILITIES CO.,  
Petitioner,  
vs.

FEDERAL POWER COMMISSION, MONDAKOTA GAS  
COMPANY, SOUTH DAKOTA PUBLIC UTILITIES  
COMMISSION and NORTH DAKOTA PUBLIC SERV-  
ICE COMMISSION, Respondents.

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**BRIEF FOR MONDAKOTA GAS COMPANY**

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**STATEMENT OF CASE**

- (a) This Respondent Adopts the Solicitor General's  
Brief in Opposition.**

The respondent, Mondakota Gas Company, concurs in, and adopts as its own, every statement of fact and law contained in the Solicitor General's brief in opposition filed herein.

- (b) Further Statement.**

In view of the full statement of the case contained in the Solicitor General's brief, no further statement is made herein.

## ARGUMENT

As appears from the Solicitor General's brief, the decision of the lower court is correct, and there is no conflict of decisions. We feel, however, that we would be remiss in our obligation to this respondent, if we failed to point out the matter of depletion, as hereinafter set forth.

### (a) Petitioner Is Depleting This Respondent's Gas Reserves.

In addition to the reasons set forth in the Solicitor General's brief, the petition should be denied to avoid delay and depletion. The lower court, cognizant of petitioner's attempt to delay this decision, effectively blocked its last attempt to obtain further delay in that court (Order, R. Vol. IV, p. 31). That order was entered on issues raised by petitioner's motion for a stay, and this respondent's objections thereto based on resulting delay and consequent depletion and loss to this respondent (R. pp. 28-30).

Petitioner, since 1941, has been, and now is transporting natural gas, which it *produces* in the Baker-Glendive and Bowdoin Gas Fields (Petitioner's Brief, p. 2, lines 24 to 32, p. 3, lines 1-2). This respondent's oil and gas lands and two producing wells are located in the same gas fields. (Opinion C. C. A., Record, Vol. IV, p. 7, lines 14 to 26.)

This respondent cannot market its gas,<sup>1</sup> although it has potential customers therefor.<sup>2</sup> Petitioner's extraction of gas is resulting in depletion.

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<sup>1</sup>Mondakota Gas Company's wells have been shut in, because it has no outlet to market its gas except through petitioner's pipe lines. (Opinion, C. C. A., Record, Vol. IV, p. 7, lines 27 to 29. Commission's Opinion and Findings, Record, Vol. I, p. 125, lines 23 to 28, p. 137, lines 21 to 26.)

<sup>2</sup>Mondakota Gas Company has potential customers to purchase its gas, and can sell same whenever it can transport its gas through petitioner's pipe lines. (Record Vol. IV, p. 126, lines 23 to 28.)

**CONCLUSION**

The decision below is correct, and there is no conflict of decisions. Delay should be avoided to prevent depletion.

We respectfully submit that an order should be entered herein denying the petition.

Respectfully submitted,

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